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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JASBIR SANGHA,

Plaintiff,

vs.

MEHUL PATEL aka MIKE PATEL;  
CHIRAG PATEL aka CHUCK PATEL;  
JAGMOHAN DHILLON; DHILLON  
MANAGEMENT INC., a California  
corporation; HARMINDER DHILLON;  
GURENDER S. SAHANI;  
TARLOCHAN S. KATARIA; NEW  
HOPE HOSPITALITY, LLC,  
STARLITE HOTELS, LTD, a Texas  
limited partnership; NEWCREST  
HOTELS, LTD., a Texas limited  
partnership; CORSICANA LODGING,  
LLC, a Texas limited liability company;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 2:11-cv-06970-DSF -FMO

**DEFENDANT JAGMOHAN  
DHILLON'S NOTICE OF MOTION  
AND MOTION TO DISMISS FOR  
FAILURE TO STATE A CLAIM;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF;**

[Fed. R. Civ. P. 12(b)(6) and 9(b)]

Hearing

Date: October 3, 2011  
Time: 1:30 p.m.  
Courtroom: 840

Action Filed: April 18, 2011  
Removal Date: August 24, 2011  
Trial Date: None set

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
RECORD:**

PLEASE TAKE NOTICE that on October 3, 2011 at 1:30 p.m., or as soon as thereafter as the matter may be heard, before the Honorable Dale S. Fischer in Courtroom 840 in the Roybal Building of the United States District Court for the Central District of California, located at 255 East Temple Street, Los Angeles, California, Defendant Jagmohan Dhillon ("Dhillon"), will and hereby does move pursuant to Federal Rule of Civil Procedure 12(b)(6) and 9(b) to dismiss the first, second, third, fourth, and fifth causes of action contained in the Complaint filed by Plaintiff Jasbir Sangha ("Plaintiff").

Good cause exists to grant this motion because the Complaint fails to allege sufficient facts to state a cause of action, and fails to allege fraud with particularity.

This motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Complaint, and such further evidence and arguments as may be presented at or before the hearing on this matter.

Because this action was originally filed in state court, and recently removed to this Court, there was insufficient time to conduct the Local Rule 7-3 conference prior to this Defendant's response date.

DATED: August 26, 2011

LAPIDUS & LAPIDUS  
A PROFESSIONAL LAW CORPORATION

/s/  
\_\_\_\_\_  
DANIEL C. LAPIDUS  
Attorneys for Defendants  
Jagmohan Dhillon, Gurender S. Sahani, and  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. Introduction/Factual Summary

Through this lawsuit, Plaintiff bases his claims against Defendant Jagmohan Dhillon (“Dhillon”), as one of several defendants (collectively, “Defendants”) for rescission based on fraud, fraud, fraudulent concealment, and unfair business practices on nothing but vague allegations, conjecture, and unfounded conclusions. Though Plaintiff seeks compensatory and punitive damages, Plaintiff does not and cannot properly plead any of his causes of action – much less with the specificity required for their claims alleging Defendants’ fraud. Dhillon brings this motion to dismiss Plaintiff’s specified causes of action for the following reasons:

Plaintiff’s First and Second Claims for rescission based on fraud and fraud arising out of the alleged fraudulent inducement of a mutual general release fail to adequately allege fraud. Plaintiff alleges misrepresentations by two *other* defendants, C. Patel and M. Patel (the “Patel Defendants”), at a meeting in California. But Dhillon is not alleged to have been present at that meeting or to otherwise have made any representations in connection with the release. Moreover, even if the alleged representations of the Patel Defendants could be attributed to Dhillon, they are still insufficient as they amount to nothing more than a prediction about the equity of unspecified pieces of property, which are mere opinions and not actionable fraud.

Plaintiff’s Third and Fourth Causes of action for fraud and fraudulent concealment relate to the underlying real estate transactions. But Plaintiff admits that he released these claims, and so they fail for that reason alone. Even if they were not barred by the release, Plaintiff has failed to plead adequately the alleged misrepresentations, their falsity, intent, or damages. Nor does Plaintiff allege a sufficient basis for a fraudulent concealment claim, which relies on the same defective fraud allegations as well as a conclusory allegation that Dhillon was a “partner.”

1 Finally, the Fifth Claim for unfair business practices under California  
 2 Business and Professions Code § 17200 is based on the same allegations and thus  
 3 fails for the same reasons.

4  
 5 II. Legal Standard For Motion to Dismiss

6 A complaint must provide “more than labels and conclusions”; it must make  
 7 “factual allegations” that “raise a right to relief above the speculative level” to the  
 8 “plausible” level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 n.3, 127  
 9 S.Ct. 1955, 1965 n.3 (2007).

10 Furthermore, where a complaint alleges fraud, it must “state with particularity  
 11 the circumstances constituting fraud. . . .” Fed. R. Civ. P. 9(b). Fraud must be pled  
 12 “with a high degree of meticulousness.” *Desaigoudar v. Meyercord*, 223 F.3d 1020,  
 13 1022-23 (9<sup>th</sup> Cir. 2000).

14 In diversity cases, a federal court applies state law as to the substantive  
 15 elements of fraud, but those elements must be pleaded with the specificity required  
 16 by federal law. *See Moore v. Brewster*, 96 F.3d 1240, 1245-46 (9<sup>th</sup> Cir. 1996).

17  
 18 III. Plaintiff’s First and Second Causes of Action Fail to State a Claim Against  
 19 Dhillon Because Plaintiff Has Not Alleged Any Fraud By Dhillon

20 The Complaint’s First and Second Causes of Action assert claims for  
 21 rescission and fraud based on a release of liability that Plaintiff claims he was  
 22 fraudulently induced to give the Defendants. Plaintiff, however, fails to allege fraud  
 23 adequately against any defendant, and in particular fails to allege any fraudulent  
 24 representations made by Dhillon.

25 Under California law, the elements of an action for fraud are:  
 26 (1) misrepresentation; (2) scienter (knowledge of falsity); (3) intent to defraud;  
 27 (4) justifiable reliance; and (5) resulting damage. *See Small v. Fritz Companies,*  
 28 *Inc.* 30 Cal.4th 167, 174 (2003).

1 Furthermore, under both California law and Federal Rule of Civil Procedure  
 2 9(b), Plaintiff must specifically state the time, place or manner of the purported  
 3 fraudulent acts each defendant committed. *See Williams v. WMX Technologies, Inc.*,  
 4 112 F.3d 175, 178 (5<sup>th</sup> Cir. 1997) (“the who, what, when, and where must be laid out  
 5 before access to the discovery process is granted.”); *Lazar v. Superior Court*, 12  
 6 Cal.4th 631, 645 (1996) (plaintiff must plead facts that “show how, when, where, to  
 7 whom, and by what means the representations were tendered”); *Goldrich v. Natural*  
 8 *Y Surgical Specialties* 25 Cal. App. 4th 772, 783 (1994) (where plaintiff merely  
 9 alleged that defendants “falsely and fraudulently” represented that their products  
 10 were safe, court found pleading failed to meet the required specificity for fraud since  
 11 it could not be determined what was said or by whom or in what manner).

12 Plaintiff has failed to meet these exacting standards. Instead, Plaintiff’s  
 13 allegations with respect to the supposed fraudulently induced release are that  
 14 “Defendants” generally “engaged in a scheme to make Plaintiff believe that in  
 15 exchange for giving them a release, that Defendants would refund to Plaintiff all of  
 16 his investments in the various hotels.” Complaint, ¶ 39. Such general, vague  
 17 allegations are not sufficient.

18 The only detail the Complaint provides with respect to the supposed  
 19 fraudulent inducement of the release is that two other defendants (M. Patel and C.  
 20 Patel) met with Plaintiff in California and made certain “inducements” and offers to  
 21 Plaintiff. *See* Complaint, ¶ 40. These allegations are insufficient for the following  
 22 two reasons.

23  
 24 A. The Allegations Are Not Made With Particularity As To Any  
 25 Defendant

26 The supposedly false representations by M. Patel and C. Patel are not pled  
 27 with particularity. Plaintiff alleges repeatedly that the Patels “induced” Plaintiff to  
 28 enter into certain agreements, but the only aspect of this inducement that is alleged



1 to be false is that “Defendants knowingly induced Plaintiff to accept a promissory  
2 note they knew would never be repaid.” This allegation is apparently based on  
3 Plaintiff’s claim that “Defendants represented and warranted that each of the  
4 individual properties securing the promissory note had equity in excess of the  
5 amount of the note.” Complaint, ¶ 40.

6 As the events of recent years have amply demonstrated, property values can  
7 change quickly, and properties that have owner equity today can be “underwater”  
8 tomorrow. Any representations as to the equity of the properties or their ability to  
9 secure the note are not actionable. *See Nibbi Brothers, Inc. v. Home Fed. Sav. &*  
10 *Loan Ass’n*, 205 Cal.App.3d 1415, 1423 (1988) (“[P]redictions as to future events,  
11 or statements as to future action by some third party, are deemed opinions, and not  
12 actionable fraud.”) (internal quotation marks omitted); *Neu-Visions Sports, Inc. v.*  
13 *Soren/McAdam/Bartells*, 86 Cal.App.4th 303, 308 (2000) (“Representations of value  
14 are opinions.”)(citation omitted).

15 Nor can the vagueness of these allegations be saved by the Complaint’s  
16 additional allegation that Defendants “caused false and fraudulent liens to be  
17 secured against the properties offered as security in order to undermine the security  
18 offered to Plaintiff.” Complaint, ¶ 42. This allegation is itself hopelessly vague, as  
19 it does not provide the specifics of, among other things, what these liens were, on  
20 which properties they were made, in whose favor, in what amount, when they were  
21 made or recorded or in what respect the liens were “false” or “fraudulent.”

22 In addition, Plaintiff’s allegations concerning the allegedly fraudulent  
23 representations are so thin that Plaintiff only alleges their falsity on “information and  
24 belief.” *See* Complaint, ¶¶ 42, 52.

25  
26  
27  
28



1           B. The Allegations Are Not Made With Particularity As To Dhillon

2           Even assuming that the allegations regarding the supposedly fraudulently  
3 induced release were sufficient against the Patel Defendants – which they are not, as  
4 shown above – they fail to establish any fraudulent conduct by Dhillon.

5           Nowhere does Plaintiff allege that *Dhillon* made any false representations to  
6 Plaintiff to obtain the release. The Complaint tries to blur together all the  
7 defendants under the generic title “Defendants,” but this is insufficient. *See Sanford*  
8 *v. MemberWorks, Inc.*, 625 F.3d 550, 558 (9<sup>th</sup> Cir. 2010) (“[t]o avoid dismissal for  
9 inadequacy under Rule 9(b), [the] complaint would need to state the time, place and  
10 specific content of the false representations *as well as the identities of the parties to*  
11 *the misrepresentation.*”) (alterations in original; internal quotation marks omitted  
12 and emphasis added).

13           More importantly, it is clear that Dhillon is not alleged to have made any of  
14 the supposedly fraudulent inducements to the release. Paragraph 40 of the  
15 Complaint alleges:

16                     In or about August 2009, *M. Patel and C. Patel* traveled to California  
17                     for the specific purpose of meeting with Plaintiff and perpetrating the  
18                     referenced fraud. *M. Patel and C. Patel* met with Plaintiff in California  
19                     and *during that meeting* induced Plaintiff to enter into various  
20                     agreements.

21 Complaint, ¶ 40 (emphasis added). That paragraph goes on to allege that  
22 “Defendants” made various inducements, but only the Patels, not Dhillon, are  
23 alleged to have “traveled to California” (Dhillon is alleged to be a resident of Texas,  
24 *see* Complaint, ¶ 4), and it is “M. Patel and C. Patel [who are alleged to have] met  
25 with Plaintiff in California. . . .” *Id.*, ¶ 40.

26           Accordingly, the First and Second Causes of Action must be dismissed.  
27  
28

1   IV.   The Third and Fourth Causes of Action Fail

2       Plaintiff's third and fourth causes of action, for fraud and fraudulent  
3 concealment, concern the supposed "underlying fraud" that was the subject of the  
4 release. These claims fail for two independent reasons.

5  
6       A.   The Claims Are Barred By Release

7       Plaintiff admits that he gave the defendants "a release of liability" on these  
8 claims. *See* Complaint, ¶ 36. Indeed, the First Cause of Action admits that he  
9 "release[d] Defendants from all claims associated with his investments with  
10 Defendants," and that he will suffer "irreparable harm" if that release is not  
11 rescinded. *Id.*, ¶¶ 44 and 46.

12       Accordingly, Plaintiff's Third and Fourth Causes of Action are dependent on  
13 his First Cause of Action for rescission. Without a rescission of the release, the  
14 Third and Fourth Causes of Action are barred. Because, as shown in the preceding  
15 section, the First Cause of Action fails, so too must these claims.

16  
17       B.   The Claims Fail to Adequately Allege Fraud or Fraudulent  
18           Concealment

19       Even if the Third and Fourth Causes of Action were not barred by the release,  
20 they would still fail to state a claim. The allegations are defective in multiple  
21 respects.

22       First, Plaintiff's cause of action for fraud conspicuously neglects to identify  
23 any specific misrepresentation or any detail as to Dhillon's alleged scienter or  
24 fraudulent intent, as to Plaintiff's reliance, or as to resultant damage. Nor does  
25 Plaintiff allege with any specificity, the time or dates Dhillon made these  
26 representations. This renders the claim fatally defective under the heightened  
27 pleading standard in fraud actions.

1 Second, Plaintiff's allegations regarding Dhillon's representations fail to show  
 2 that the alleged representations were false, that Dhillon knew them to be false, or  
 3 that they had any adverse impact on Plaintiffs. For example, Plaintiff states that  
 4 "Dhillon represented himself to be a successful real estate investor and hotelier," but  
 5 does not allege facts that this was false (*i.e.*, that Dhillon was *not* a successful real  
 6 estate investor and hotelier) or that Dhillon knew it to be false. *See* Complaint, ¶ 24.  
 7 Plaintiff states that Dhillon represented that he "could deliver profitable hotel real  
 8 estate investments," but does not provide evidence that this was false (*i.e.*, that  
 9 Dhillon *was not able to* deliver profitable hotel real estate investments) or that  
 10 Dhillon knew it to be false. *Id.* Again, Plaintiff states that "Dhillon claimed to be  
 11 able to deliver cash returns of at least 20%," but does not provide evidence that this  
 12 was false (*i.e.*, that Dhillon *was not able to* deliver cash returns of at least 20%) or  
 13 that Dhillon knew it to be false. *Id.*

14 Moreover, "opinions that future profits will be realized on investments" are  
 15 not actionable." *Harazim v. Lynam*, 267 Cal.App.2d 127, 131 (1968); *see also Nibbi*  
 16 *Brothers, Inc. v. Home Fed. Sav. & Loan Ass'n*, 205 Cal.App.3d 1415, 1423 (1988)  
 17 ("[P]redictions as to future events, or statements as to future action by some third  
 18 party, are deemed opinions, and not actionable fraud.") (internal quotation marks  
 19 omitted); *Neu-Visions Sports, Inc. v. Soren/McAdam/Bartells*, 86 Cal.App.4th 303,  
 20 308 (2000) ("Representations of value are opinions.")(citation omitted).

21 Of course, failing to demonstrate the false or misleading nature of the subject  
 22 communications is akin to failing to topple the first in a row of dominoes: if the  
 23 communications are not demonstrated to be false, then there can be no scienter,  
 24 justifiable reliance, or a direct connection to any purported damages. *See Belden v.*  
 25 *Henriques*, 8 Cal. 87, 89 (1857) (in order to sustain allegations of fraud, it is  
 26 necessary to prove that the representations alleged to have been fraudulent and  
 27 deceitful were not true).

1 In addition, Plaintiff has also failed to allege specific facts to support his  
 2 allegation that Dhillon or the other Defendants had any intent to defraud. Plaintiff  
 3 instead merely makes a conclusory allegation that he “is informed and believes and  
 4 on the basis of said information and belief alleges that Defendants made such  
 5 representations knowing of the falsity thereof and with the intent to defraud Plaintiff  
 6 into making the various hotel investments.” Complaint, ¶ 59; *see also* ¶ 71.

7 Third, Plaintiff provides no allegations to substantiate his claim to have been  
 8 damaged. Instead, he alleges only the bare claim that “[a]s a direct and proximate  
 9 result of the conduct of Defendants, Plaintiff has been damaged,” and that “[t]he full  
 10 nature, extent and amount of Plaintiff’s damages have yet to be ascertained.”  
 11 Complaint, ¶ 63; *see also* ¶ 70 (same). This is insufficient. *See Stephenson v.*  
 12 *Argonaut Ins. Co.*, 125 Cal.App.4th 962, 974-975 (2004) (the injury or damage from  
 13 fraud must not only be distinctly alleged but its causal connection with the reliance  
 14 on the representation must be shown, and damage must be such as follows the act  
 15 complained of as a legal certainty).

16 In sum, Plaintiff attempts to link together allegations that are vague,  
 17 unsupported, and unconnected to any purported damages. Without any specificity  
 18 or facts to support Plaintiff’s conclusory allegations of fraud, it is apparent that  
 19 Plaintiff is simply pleading fraud causes of action in order to seek punitive damages.  
 20 Because Plaintiff’s fraud and fraudulent concealment claims suffer from fatal  
 21 defects which cannot be cured, Dhillon’s motion to dismiss these claims should be  
 22 granted.

23  
 24 C. The Fraudulent Concealment Claim Fails To Establish a Duty  
 25 to Disclose or a Failure to Disclose Material Facts

26 The claim for fraudulent concealment suffers from all of the defects described  
 27 above. In addition, it fails to establish either a duty to disclose or a breach of that  
 28 duty. “[T]he elements of a cause of action for fraud based on concealment are:

(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.” *Levine v. Blue Shield of California*, 189 Cal.App.4th 1117, 1126-1127 (2010) (emphasis, quotations, and citations omitted).

Plaintiff alleges, in a wholly conclusive manner, that “[b]ecause Defendants were working through the Dhillon Defendants who has [sic] posed as partners with Plaintiff in these transactions, Defendants had a duty to disclose all facts and information they had concerning the transactions. . . .” Complaint, ¶ 66.

This bare allegation is insufficient to establish a partnership relationship between Plaintiff and Dhillon. Nor do Plaintiff’s allegations otherwise establish a duty to disclose. “The key factor in the existence of a fiduciary relationship lies in control by a person over the property of another.” *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC*, 158 Cal.App.4th 226, 246 (2007) (quotations and citation omitted). Here, Plaintiff does not allege that Dhillon had or exercised control over their property. Instead, the pleadings state that the parties all previously agreed to the substance of the transactions and either mutually formed the entities in order to consummate the specific transactions or used a previously-formed entity to accomplish the agreed-upon transactions. *See* Complaint, *passim*.

Plaintiff never actually defines the parties’ formal relationships (or whether such formal relationships existed), describes the structure of the various entities (or, in some cases, whether the entities were actually formed), or provides any other factual allegations to demonstrate that Dhillon had control over the Plaintiff (through reference to the entities’ articles of organization, for example) or control in

1 the ultimate transaction enough to give rise to a fiduciary relationship.<sup>1</sup> Simply  
 2 alleging that Plaintiff “believes” that Dhillon was “a manager,” or that he “posed as  
 3 partners” with nothing more, does not demonstrate that Dhillon was Plaintiff’s  
 4 partner or fiduciary. Likewise, for Dhillon to simply hold himself out as a  
 5 successful real estate investor interested in finding other investors does not make  
 6 him a partner or fiduciary. *See Apollo Capital*, 158 Cal.App.4th at 246 (“the mere  
 7 placing of a trust in another person does not create a fiduciary relationship”)  
 8 (quotations and citations omitted); *Oakland Raiders v. National Football League*,  
 9 131 Cal.App.4th 621, 633-634 (2005) (“a mere [agreement] does not constitute a  
 10 trust or create a fiduciary relationship”); *City of Hope National Medical Center v.*  
 11 *Genentech, Inc.*, 43 Cal.4th 375, 387-388 (2008) (a fiduciary relationship does not  
 12 necessarily arise merely because one party entrusts its affairs, interests or property to  
 13 another, there is a grant of broad discretion to the other, the two parties have an  
 14 asymmetrical access to information, and/or one party is vulnerable and dependent  
 15 upon the other.)

16 Further, Plaintiff fails to plead with sufficient detail as to what the purported  
 17 breaches of duty actually consisted. *See Cummins v. Gates*, 235 Cal.App.2d 532,  
 18 545 (1965) (breach of fiduciary duty must be pled with specificity). Plaintiff alleges  
 19 that Dhillon breached his duty by failing to disclose his purported “true relationship”  
 20 and “financial arrangement” with the other Defendants, unspecified “self-dealing”,  
 21 and “[t]he inflated value of the real estate being purchased as alleged herein.” None  
 22 of these alleged breaches, however, are supported with any actual factual  
 23 allegations. *See Complaint*, ¶ 66. Importantly, this lack of factual detail dovetails  
 24 with Plaintiff’s deficiencies in pleading his fraud claims – as the purported failures  
 25

---

26 <sup>1</sup> The only aspect of Dhillon’s purported control Plaintiff alleges is that once the  
 27 transactions were complete, Dhillon would manage the hotel operations – but  
 28 Plaintiff does not allege any wrongdoing with respect to the operation of the hotel.  
*See Complaint*, ¶ 30.



1 to disclose are the same as the purported fraudulent acts, and as Plaintiff's fraud  
 2 claims fail because he has not alleged those fraudulent acts with the required degree  
 3 of specificity, the breach of fiduciary duty claims must fail as well.

4 Again, Plaintiff cannot plead a withholding of information if he cannot show  
 5 that Dhillon actually *knew of* any information (or if he cannot show that there was  
 6 any information to be known in the first place). As such, Plaintiff's allegations are  
 7 hardly the "who, what, where, when, why, and how" required to adequately plead a  
 8 fraud claim. Because Plaintiff's fraudulent concealment claim suffers from the  
 9 above-referenced defects, Dhillon's motion to dismiss this claim should be granted.

10  
 11 V. Plaintiff's Business and Professions Code § 17200 Claim Fails

12 The Fifth Cause of Action for Unfair Business Practice under California  
 13 Business and Professions Code § 17200 is expressly linked to the previous claims  
 14 for fraud and provides no further allegations. *See* Complaint, ¶¶ 72-74.  
 15 Accordingly, it fails for the same reasons as the prior claims.

16  
 17 VI. Conclusion

18 Based on the aforementioned arguments, as well as arguments raised during  
 19 the hearing on this motion, Dhillon respectfully requests that the Court grant this  
 20 motion and dismiss Plaintiff's first, second, third, fourth, and fifth causes of action  
 21 against Dhillon.

22  
 23 DATED: August 26, 2011

LAPIDUS & LAPIDUS  
 A PROFESSIONAL LAW CORPORATION

25 /s/  
 26 DANIEL C. LAPIDUS  
 27 Attorneys for Defendants  
 Jagmohan Dhillon, Gurender S. Sahani, and  
 28 Tarlochan S. Kataria